IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO.17698 of 1997

Between:

J.P.Reddy, S/o.Subbareddy, 28 years, Constable (91425642), Central Industrial Security Force, ONGC, Nazira, Sibsagar District, Assam State.

...PETITIONER

AND

1. The Commandant, CISF, ONGC, Nazira, Assam State.
2. The Deputy Inspector General, Central Industrial Security Force, 41, Karaya Road, Park Circus, Calcutta-17.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ order or direction more in the nature of Certiorari calling for the records relating to the impugned Order No.V-15014/CISF/ONGC/Maj-11/95/5342 dt.04.08.1995 issued by the 1st respondent read with No.V-11014/40/95/Ad.II/3792 dated 21.03.1997 issued by the 2nd respondent and quash the same by holding the impugned proceedings are illegal, arbitrary, subversive of Articles 14, 16 and 21 of the Constitution of India.

Counsel for the Petitioner: MR.D.LINGA RAO

Counsel for the Respondents: MR.K.VENKATESWARA RAO

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.17698 OF 1997

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to quash the impugned order No.V-15014/CISF/ONGC/Maj-11/95/5342, dated 04.08.1995 issued by the first respondent as confirmed by the second respondent in his proceedings No.V-11014/40/95/Ad.II/3792, dated 21.03.1997 as arbitrary and illegal and to quash the same.

According to the petitioner, he was originally recruited as a Constable in CISF (Ministry of Home Affairs) and posted at Kurnool with effect from 21.10.1991 and directed to report to the office of the Commandant, CISF, Tiruvananthapuram Camp at Kurnool. Accordingly he reported to duty on 21.10.1991. Subsequently, he was sent for training in Orissa for a period of nine months and after successful completion of training, he was posted at CISF, ONGC, Nazira, Assam State and since then he was working there. While so, he fell sick and applied for sanction of leave and also for Railway Warrant, so as to proceed on Medical Home Rest as per the medical advice. His request was neither granted nor rejected by the authorities. Therefore,

he made another representation on 08.12.1994 for grant of medical leave for one month on the basis of certificate issued by the Medical Officer, ONGC, Sibsagar Hospital, duly counter signed by the Government doctors, Nazira and came to home town. Unfortunately, he could not recover from the sickness and therefore, he applied for extension of leave duly enclosing the medical certificate issued by the Primary Health Centre, Chapirevula. He fell sick continuously with a small recess. Finally, after recovery from the illness, he reported for duty on 28.04.1995 along with medical certificate, counter signed by the Medical Officer, Nazira, Sibsagar Hospital for the period from 25.11.1994 to 27.04.1995. In the meanwhile, the first respondent, instead of granting leave, unjustly issued a charge sheet under Rule 34 of CISF Rules, 1969 on 21.02.1995, framing the following charges.

Article of Charge No.1: An act of gross indiscipline and unbecoming of a member of the force on the part of No.914525642, Constable, J.P.Reddy of CISF Unit, ONGC, Nazira, Lakwa Sector in that he deserted Sector Hqrs lines on 08.12.1994 at about 21.45 hrs without intimation to or prior permission from the competent authority and still continuing his unauthorized absence.

Article of Charge No.II: An act of gross indiscipline and disobedience of lawful orders of superior officer on the part of No.914525642, Constable, J.P.Reddy of CISF Unit ONGC Nazira Lakwa Sector in that he failed to response several call up notices sent to him at his home address vide Commandant CISF Unit ONGC (N) letter No.E-24020/ONGC (N)/AWL/Ad.III/94/8689 dated 19/20.12.1994 letters of even No.210, dated 10.01.1995 and No.694, dated 30/31.01.1995 by registered post with the direction to report back in this Unit immediately.

Thereafter, an enquiry officer was appointed and notice of enquiry dated 25.03.1995 was issued fixing the date of hearing as 17.04.1995. Even thereafter, since the petitioner was continuously sick, he could not attend the enquiry scheduled on 17.04.1995. However, he reported to the Unit on 28.04.1995. Therefore, the enquiry was conducted. During the enquiry, he was placed under suspension on 03.05.1995 and after enquiry was concluded, the impugned proceedings were issued removing the petitioner from service. Aggrieved by the same, he has filed an appeal and the same was also dismissed. Therefore, he filed the present Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the

allegations made by the petitioner and asserting that even prior to awarding punishment of removal from service on 04.08.1995, the petitioner was awarded three minor punishments for breach of discipline during the short spell of service rendered in CISF. Since the petitioner deserted the Unit Headquarters, a charge memo was sent to his home address by registered post. The petitioner did not respond to the same. Therefore, an enquiry officer was appointed. While the Departmental proceedings were in progress, the petitioner arrived at the Unit on 28.04.1995. On his arrival, he was placed under suspension on 03.05.1995. The Enquiry Officer completed enquiry and submitted a report on 30.06.1995 holding the petitioner guilty of the charges. A copy of the enquiry report was supplied to the petitioner on 10.07.1995 and the petitioner replied the same. Considering the enquiry report, the reply of the petitioner, documents produced during the course of enquiry vis-a-vis gravity of the offence committed by the petitioner, penalty of removing him from service was imposed, which is confirmed by the appellate authority. Therefore, the allegation of the petitioner that enquiry was not properly conducted and the punishment was disproportionate to that of the misconduct and he had a clean record of service prior to his removal from service under the impugned order is without any substance.

Heard both sides.

This is a case where the illness of the petitioner is not disputed. It is also not disputed as to the medical advice given to the petitioner by the ONGC which is certified by Sibsagar Hospital, Nazira. Therefore, the petitioner wanted to take home rest due to his serious illness, but the Commandant asked him to take rest at Lakwa Camp. The petitioner being in serious sickness could not resist from going home and after going home, he had promptly sent application for extension of leave. Ultimately, he reported to duty on 28.04.1995 along with the medical certificate which was attested by the ONGC, Nazira, Sibsagar Hospital. Once this is the

position, it cannot be said that the petitioner has deserted willfully from his place of work. This is a case of serious illness suffered by the petitioner and it was also diagnosed as 'typhoid'. It can be noted that the general tendency of 'typhoid' is to relapse again and again and to that extent he filed certificates from the Government Hospital at Kurnool, which were attested by the Medical Officers of the ONGC Sibsagar Hospital, Nazira. In these circumstances though the enquiry conducted cannot be faulted with, the punishment of removal from service can definitely be said to be disproportionate to that of the misconduct proved against the petitioner.

Learned counsel for the respondents contended that the petitioner having suffered three minor punishments earlier, no lenient view can be taken nor the punishment imposed by the authority can be said to be disproportionate to that of the misconduct proved, though those minor punishments were not explained in the counter filed by the respondents. In a case like this, the Department could have taken a lenient view of the matter and could have given an opportunity to the petitioner to serve the Department. Such a course of action was not adopted. On the other hand, an ultimate punishment of removal from service was imposed. The punishment of removal from service in the given circumstances of this case is not warranted and the same is disproportionate to that of the alleged misconduct. Therefore, I am of the opinion that the respondents may impose any punishment, other than removal from service, such as, stoppage of increments, reduction in the pay scale etc. Since this Court cannot substitute the punishment to be imposed by usurping the jurisdiction of the disciplinary authority, the matter is remanded to the disciplinary authority, the second respondent, for reconsideration and imposing any punishment other than the punishment of removal from service.

Accordingly, the impugned proceedings dated 04.08.1995 as confirmed by the appellate authority on 21.03.1997 are set aside and the matter is remanded to the second respondent for reconsideration as indicated above. This exercise shall be

done by the second respondent within a period of two months from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above. No costs.

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(C.V.RAMULU, J)

4th October 2004

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the fourth day of October 2004.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commandant, CISF, ONGC, Nazira, Assam State.
2. The Deputy Inspector General, Central Industrial Security Force, 41, Karaya Road, Park Circus, Calcutta-17.
3. Two CD copies.